

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

DANIEL JOSEF MCDERMOTT,
Plaintiff,
v.
WAYNE MILLER, *et al.*,
Defendants.

Case No. 3:22-cv-00046-SLG-SAO

**ORDER RE REPORT AND RECOMMENDATION TO DISMISS FOR FAILURE
TO PROSECUTE**

On July 15, 2022, at Docket 8, Magistrate Judge Scott A. Oravec issued a *Screening Order* instructing Plaintiff Daniel Josef McDermott to file an *Amended Complaint* or a *Notice of Voluntary Dismissal* by August 16, 2022, or risk dismissal of this case. Plaintiff did not respond to the Court's order. On September 27, 2022, Judge Oravec issued a *Report and Recommendation to Dismiss for Failure to Prosecute* in which he recommended that this action be dismissed without prejudice, that all pending motions be denied as moot, and that this dismissal constitute a second strike to Plaintiff as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. ___, 140 S.Ct. 172 (2020).¹ Plaintiff did not file a response to the report.

¹ 28 U.S.C. § 1915(g) prohibits a prisoner who has filed more than three actions or appeals in any federal court in the United States that are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in "immediate danger of serious

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”² A court is to “make a *de novo* determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations to which objection is made.”³ However, § 636(b)(1) does not “require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”⁴

The Court has reviewed the *Report and Recommendation to Dismiss for Failure to Prosecute* and agrees with its analysis. Accordingly, the Court adopts the report in its entirety, and IT IS ORDERED that this action is DISMISSED WITHOUT PREJUDICE for failure to prosecute. All pending motions in this matter are DENIED AS MOOT. This dismissal shall be a second STRIKE as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. ___, 140 S.Ct. 172 (2020).

DATED this 27th day of October, 2022, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

physical injury.”

² 28 U.S.C. § 636(b)(1).

³ *Id.*

⁴ *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).